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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA
MISSOULA DIVISION

BRETT WALLACE; and STATE)	
FARM MUTUAL AUTOMOBILE)	
INSURANCE Co., an Illinois)	Cause No.
corporation, as subrogee of Wallace;)	
)	
Plaintiffs,)	
vs.)	PLAINTIFFS' COMPLAINT
)	
UNITED STATES POSTAL)	
SERVICE, a federal agency; and)	
Does 1-3,)	
)	
Defendants.)	

COME NOW the plaintiffs, by and through their counsel of record, Hash, O'Brien, Biby & Murray, PLLP, and complain and allege against the defendants as follows:

JURISDICTION

1. Federal jurisdiction is proper here because the case presents a federal question under the Federal Tort Claims Act, pursuant to § 28 USC § 1331.
2. Plaintiff Brett Wallace resides in Missoula County, Montana.

3. Plaintiff State Farm Mutual Automobile Insurance Company (“State Farm”) is an Illinois corporation that insures Brett Wallace and is subrogated to his rights. State Farm has its principal place of business in Bloomington, Illinois. At all times relevant herein, State Farm was licensed to do business in the State of Montana.

4. The automobile accident giving rise to this action occurred in Missoula County, Montana.

5. Plaintiffs filed an administrative claim against the United States Postal Service (“USPS”), which was denied on June 11, 2014.

FACTS COMMON TO ALL COUNTS

6. On August 28, 2013, Wallace was southbound on Garfield Avenue in Missoula, Montana. Darren Mentzer, driving a USPS vehicle and acting within the scope of his employment with the USPS, was westbound on 12th Street. The intersection of these streets is uncontrolled. Wallace was on the right, and had the right-of-way. Mentzer failed to stop, and pulled into the intersection into Wallace’s path, causing Wallace to collide with the USPS vehicle.

7. The collision caused property damage to Wallace’s vehicle in the amount of \$8,096.75, together with pre-judgment interest thereon from May 24, 2014, at the legal rate of ten percent *per annum*, pursuant to Montana state law § 27-1-210, MCA.

8. At the time of the property damage, Wallace owned an insurance policy issued by State Farm. Under that policy, State Farm has paid the sum of \$7,596.75 on behalf of Wallace to repair the property damages. By reason of that payment and under the terms of the policy, State Farm is subrogated to Wallace's interests to the extent of that payment.

COUNT I - NEGLIGENCE

9. Plaintiffs reallege the allegations contained in paragraphs 1 through 8 above.

10. Defendant USPS breached a duty of care owed under the Federal Tort Claims Act, by failing to use reasonable care and failing to act as an ordinarily prudent person would act under the circumstances, when its driver, acting within the scope of his employment, failed to yield the right-of-way at an uncontrolled intersection, and caused a collision with Wallace's vehicle.

11. Defendant USPS's negligence caused plaintiffs' damages as set forth herein.

COUNT II - NEGLIGENCE *PER SE*

12. Plaintiffs reallege the allegations contained in paragraphs 1 through 11 above.

13. Defendant USPS violated the following Montana statutes, among others: § 61-8-339(1), MCA, failing to yield at an intersection; § 61-8-301, MCA, reckless driving; and § 61-8-302, MCA, careless driving.

14. Defendant USPS's violation of those statutes caused plaintiffs' damages.

15. Defendant USPS is negligent *per se* for having violated Montana law.

WHEREFORE, plaintiffs pray for judgment against defendants as follows:

1. For property damages in the amount of \$8,096.75, together with pre-judgment interest thereon from May 24, 2014, at the legal rate of ten percent *per annum*;

2. For such other and further relief as the Court deems just and proper.

DATED this 19th day of September, 2014.

HASH, O'BRIEN, BIBY & MURRAY, PLLP

/s/ Anne G. Biby

Anne G. Biby

Attorneys for Plaintiffs